

State of Utah  
Administrative Rule Analysis

## NOTICE OF PROPOSED RULE

The agency identified below in box 1 provides notice of proposed rule change pursuant to *Utah Code* Sections 63-46a-4. Please address questions regarding information on this notice to the agency. The full text of all rule filings is published in the *Utah State Bulletin* unless excluded because of space constraints. The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
Utah Admin. Code ref. (R no.):	R156-37-610	Time filed:	
Changed to Admin. Code Ref. (R no.):			
1.	Agency: Commerce/Division of Occupational and Professional Licensing		
	Room no.:		
	Building: Heber M. Wells Building		
	Street address 1: 160 East 300 South		
	Street address 2:		
	City, state, zip: Salt Lake City UT 84111-2316		
	Mailing address 1: PO Box 146741		
	Mailing address 2:		
	City, state, zip: Salt Lake City UT 84114-6741		
	<b>Contact person(s):</b>		
	<b>Name:</b>	<b>Phone:</b>	<b>Fax:</b>
	Diana Baker	801-530-6179	801-530-6511
			dbaker @utah.gov
(Interested persons may inspect this filing at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)			
2.	<b>Title of rule or section (catchline):</b>		
	Controlled Substance Database - Limitations on Access to Database Information - Standards and Procedures for Identifying Individuals Requesting Information.		
3.	<b>Type of notice:</b>		
	New ___; Amendment XX; Repeal ___; Repeal and Reenact ___		
4.	<b>Purpose of the rule or reason for the change:</b>		
	The Division is proposing amendments to this rule to allow the controlled substance database manager to provide information from the database to various individuals that have specific purposes for appropriate healthcare management.		
5.	<b>This change is a response to comments from the Administrative Rules Review Committee.</b>		
	Yes ___; No XX		
6.	<b>Summary of the rule change:</b>		
	Paragraphs (3) and (4) are deleted and a new paragraph (3) is added which clarifies that the database manager may provide information from the database to licensed practitioners having authority to prescribe controlled substances and to licensed pharmacists having authority to dispense controlled substances. The database manager may provide the information on his own volition to accomplish the stated purposes set forth in Subsection 58-37-7.5(5).		
7.	<b>Aggregate anticipated cost or savings to:</b>		
	<b>A) State budget:</b>		

	<p>The Division anticipates it will incur minimal costs of approximately \$50 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.</p>														
	<p><b>B) Local government:</b></p>														
	<p>Proposed amendments do not apply to local governments, therefore no costs or savings are anticipated.</p>														
	<p><b>C) Small businesses (fewer than 50 employees) AND persons other than businesses:</b></p>														
	<p>The Division anticipates there will be no costs or savings associated with this rule filing to either the regulated professions, small businesses or the general public since this rule amendment clarifies an internal process within the Division for making decisions for release of information.</p>														
8.	<p><b>Compliance costs for affected persons</b>  ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization or any character other than an agency):</p> <p>The Division anticipates there will be no costs or savings associated with this rule filing to either the regulated professions, small businesses or the general public since this rule amendment clarifies an internal process within the Division for making decisions for release of information.</p>														
9.	<p><b>Comments by the department head on the fiscal impact the rule may have on businesses:</b></p> <p>No fiscal impact to businesses is anticipated with this rule filing which implements the provisions of the Utah Controlled Substances Act regarding sharing information from the Controlled Substance Database. Francine A. Giani, Executive Director</p>														
10.	<p><b>This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.</b>  <b>State code or constitution citations (required):</b></p> <p>Subsections 58-1-106(1)(a), 58-37-6(1)(a) and 58-37-7.5(7)</p>														
11.	<p><b>This rule adds, updates, or otherwise changes the following titles of materials incorporated by references</b> (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank):</p>														
12.	<p><b>The public may submit written or oral comments to the agency identified in box 1.</b> (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the <i>Utah State Bulletin</i>. See Section 63-46a-5 and Rule R15-1 for more information.)</p> <p><b>A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):</b> 10/15/2007</p> <p><b>B) A public hearing (optional) will be held:</b></p> <table border="1"> <tr> <td><b>on (mm/dd/yyyy):</b></td><td><b>at (time):</b></td><td><b>At (place):</b></td></tr> <tr> <td></td><td></td><td></td></tr> <tr> <td></td><td></td><td></td></tr> <tr> <td></td><td></td><td></td></tr> </table>			<b>on (mm/dd/yyyy):</b>	<b>at (time):</b>	<b>At (place):</b>									
<b>on (mm/dd/yyyy):</b>	<b>at (time):</b>	<b>At (place):</b>													
13.	<p><b>This rule change may become effective on (mm/dd/yyyy):</b> 10/22/2007</p> <p>NOTE: The date above is the date on which this rule MAY become effective. It is <i>NOT</i> the effective date. After the date designated in Box 12(A) above, the agency <i>must</i> submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.</p>														
14.	<p><b>Indexing information -- keywords</b> (maximum of four, in lower case, except for acronyms (e.g., "NASA") or proper nouns (e.g., "Medicaid")):</p> <table border="1"> <tr> <td>controlled substances</td><td>licensing</td></tr> <tr> <td></td><td></td></tr> </table>			controlled substances	licensing										
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15.	<p><b>Attach an RTF document containing the text of this rule change (filename):</b></p>		R156-37.pro												

**To the agency:** Information requested on this form is required by Sections 63-46a-4, 5, 6, and 10. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

### AGENCY AUTHORIZATION

<b>Agency head or designee, and title:</b>	F. David Stanley, Division Director	<b>Date (mm/dd/yyyy):</b>	08/23/2007
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ProposedRule.doc 9/26/2003

**R156. Commerce, Occupational and Professional Licensing.**

**R156-37. Utah Controlled Substances Act Rules.**

**R156-37-610. Controlled Substance Database - Limitations on Access to Database Information - Standards and Procedures for Identifying Individuals Requesting Information.**

(1) In accordance with Subsections 58-37-7.5(8)(a) and (b), the division director shall designate in writing those individuals within the division who shall have access to the information in the database.

(2) Personnel from federal, state or local law enforcement agencies may obtain information from the database if the information relates to a current investigation being conducted by such agency. The manager of the database may also provide information from the database to such agencies on his own volition when the information may reasonably constitute a basis for investigation relative to violation of state or federal law.

~~(3) [In accordance with Subsection 58-37-7.5(7)(b), persons may request information from the database either orally or in writing.]~~

~~(4) The manager of the database may release information upon oral request only if the identity of the person is verified. Identity of a practitioner may be made by use of a DEA number or other verifiable, confidential numbers provided by the division or other government agencies to practitioners.]~~In accordance with Subsections 58-37-7.5(5)(c), (6)(b), (7)(b), and (8)(d) and (e), the database manager may provide information from the database to licensed practitioners having authority to prescribe controlled substances and to licensed pharmacists having authority to dispense controlled substances. The database manager may provide the information on his own volition to accomplish the stated purposes set forth in Subsection 58-37-7.5(5).

~~(5)~~(4) Any individual may request information in the database relating to that individual's receipt of controlled substances. Upon request for database information on an individual who is the recipient of a controlled substance prescription entered in the database, the manager of the database shall make available database information exclusively relating to that particular individual under the following limitations and conditions:

(a) The requestor seeking database information personally appears before the manager of the database, or a designee, with picture identification confirming his identity as the same person on whom database information is sought.

(b) The requestor seeking database information submits a signed and notarized request executed under the penalty of perjury verifying his identity as the same person on whom

database information is sought, and providing their full name, home and business address, date of birth, and social security number.

(c) The requestor seeking database information presents a power of attorney over the person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the grantor of the power of attorney is the same person on whom database information is sought, including the grantor's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the person holding the power of attorney.

(d) The requestor seeking database information presents verification that he is the legal guardian of an incapacitated person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the incapacitated ward of the guardian is the same person on whom database information is sought, including the ward's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the legal guardian of the incapacitated person.

(e) The requestor seeking database information shall present a release-of-records statement from the person on whom database information is sought and further complies with the following:

(i) submits a verification from the person on whom database information is sought consistent with the requirements set forth in paragraph ([5]4) (b);

(ii) submits a signed and notarized release of records statement executed by the person on whom database information is sought authorizing the manager of the database to release the relevant database information to the requestor; and

(iii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the requestor identified in the release

of records;

(~~[6]~~5) Before data is released upon oral request, a written request may be required and received.

(~~[7]~~6) Database information may be disseminated either orally, by facsimile or by U.S. mail.

(~~[8]~~7) The Utah Department of Health may access Database information for purposes of scientific study regarding public health. To access information, the scientific investigator must:

(a) show the research is an approved project of the Utah Department of Health;

(b) provide a description of the research to be conducted, protocols for the project and a description of the data needs from the Database;

(c) provide assurances and a plan that demonstrates all Database information will be maintained securely, with access only permitted by the scientific investigator;

(d) provide for electronic data to be stored on a stand alone database computer system with access only allowed by the scientific investigator; and

(e) pay all relevant expenses for data transfer and manipulation.

**KEY: controlled substances, licensing**

**Date of Enactment or Last Substantive Amendment: [~~February 16, 2006~~2007]**

**Notice of Continuation: March 15, 2007**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-37-6(1)(a); 58-37-7.5(7)**